

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Arthur Dale BURNS

Serial No.: 09/603,510

Filed: June 26, 2000

For: STUDENT LOAN CONSOLIDATION
QUALIFICATION SYSTEM AND
METHOD OF OPERATION THEREOF

Patent No.: 7,574,401

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37 C.F.R. § 1.8

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May 20, 2010

Date


S. Scott Gordon

REQUEST FOR RECONSIDERATION OF
PATENT TERM ADJUSTMENT IN VIEW OF WYETH

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Patentees request reconsideration of Patent Term Adjustment (PTA) under 37 C.F.R. §1.705(d). The Decision on Request for Recalculation of Patent Term Adjustment in View of Wyeth and Notice of Intent to Issue Certificate of Correction dated April 20, 2010 indicates a PTA of 1,327 days. Applicants believe this to be an error and request the PTA to be changed to 1,388 days.

REMARKS

The patent term adjustment under 35 U.S.C. §154(b) for the above-identified patent is listed as 1,327 days. The determination of 1,327 days is in error in that pursuant to 35 U.S.C. §154(b) the Office failed to issue a patent within three years of the actual filing date of the above-referenced application in accordance with 37 CFR §1.702(b), failed to take certain action within the time frame specified in 37 CFR §1.702(a), and accrued delay due to successful appellate review pursuant to 37 CFR §1.702(e).

Pursuant to 37 CFR §1.703(b), Patentees are entitled to a period of patent term adjustment due to failure of the Office to issue a patent within three years after the date the corresponding application was filed under 35 U.S.C. §111(a), *i.e.*, June 26, 2003 (hereinafter "Three Year Delay"). Since the Office failed to issue the above-identified patent within 3 years, Patentees are entitled to a period of patent term adjustment beginning on the day after the date that is 3 years after the filing date of the application, *i.e.*, June 27, 2003, and ending on the day before the date a Request for Continued Examination was filed, *i.e.*, October 27, 2003. Accordingly, the period of patent term adjustment due to the Three Year Delay by the Office is 123 days. This period of adjustment is erroneously listed as 62 days on the Patent Term Adjustment Sheet available on PAIR.

Patentees agree with the Office's determination of patent term adjustment due to examination delay available under §1.702(a) as 923 days (256 days for failure to mail an action not later than 14 months after the actual filing date and 667 days for failure to respond with an action within four months of a response). Patentees also agree with the Office's determination of 509 days as the period of delay due to successful appellate review, pursuant to §1.702(e).

As set forth in 37 CFR §1.703(f), Patentees are entitled to a period of patent term adjustment equal to the period of delays based on the grounds set forth in 37 CFR §1.702 (hereinafter "Office Delay") reduced by the period of time equal to the period of time during which Patentees failed to engage in reasonable efforts to conclude prosecution pursuant to 37 CFR §1.704 (hereinafter "Applicant Delay"). With respect to the above-referenced application, the total period of Office Delay is the sum of the period of Three Year Delay (123 days), the period of Examination Delay (923 days), and the period of delay for successful appellate review (509 days) *to the extent these periods of delay are not overlapping*. As the period of 14 Month Delay ended on May 9, 2002, prior to the first day of the period of Three Year Delay, *i.e.*, June 26, 2003, Patentees submit that these periods are not overlapping. In addition, the periods of Examination Delay begin April 7, 2005 or later, which is after the last day of the period of Three Year Delay, *i.e.*, October 27, 2003. Accordingly, Patentees submit that the total period of Office Delay is 1,555 days, which is the sum of the period of Three Year Delay (123 days), the period of Examination Delay (923 days), and the period of delay for successful appellate review (509 days), reduced by the period of overlap (0 days).

To calculate the period of patent term adjustment, the total period of Office Delay is reduced by the period of Applicant Delay, which the Office correctly calculated as a period of 167 days. Accordingly, Patentees submit that the correct patent term adjustment for the above-referenced application is 1,388 days, which is the difference between the total period of Office Delay (1,555 days) and the period of Applicant Delay (167 days).

In view of the foregoing, it is respectfully requested that this Request for Reconsideration of Patent Term Adjustment be favorably considered and that a corrected Determination of Patent Term Adjustment be issued to reflect a patent term adjustment of 1,388 days.

CONCLUSION

In consideration of the events described above, Patentees believe the PTA calculation of 1,327 days is incorrect. As such, Patentees respectfully request reconsideration of the PTA in the following manner:

- 1) Total Office delay should be calculated as 1,555 days;
- 2) Total Applicant delay should be calculated as 167 days; and
- 3) Total PTA should be calculated as 1,388 days.

The required fee in the amount of \$200.00 in connection with the filing of this paper is being charged to a credit card through EFS-Web concurrently with this submission. The Commissioner is hereby authorized to deduct any underpayment of fees or any additional fees required under 37 C.F.R. §§ 1.16 to 1.21 in connection with the filing of this paper from Fulbright & Jaworski Deposit Account No.: 50-1212/UHGC:1104US.

Respectfully submitted,



S. Scott Gordon
Reg. No. 57,294
Attorney for Patentees

FULBRIGHT & JAWORSKI L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701
(512) 474-5201

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